Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1996

ALBERT C. HUTTON, JR., PETITIONER

VS.

GERALD "MIKE" HOWARD, RESPONDENT

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF OKLAHOMA

ALBERT C. HUTTON, JR., PETITIONER PRO SE
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10 pp

QUESTION PRESENTED FOR REVIEW

WHETHER the ORDER entered by the trial court on 09/07/95, absent its jurisdiction being legally invoked under the provisions of 12 O.S. 1989 $3230 to grant the Respondent's motion for monetary sanctions in the sum of $480.00 to be imposed upon this Petitioner for his cancellation and failure to attend the taking of the Respondent's scheduled deposition when he was never personally served the subpoena and/or notice as was duly required pursuant to the provisions under 12 O.S. 1991 $2004.1A(2) and/or 12 O.S. 1989 $3230B(2), respectively, when such failure of personal service was the direct and proximate result of Respondent's violation of the provisions of the OKLAHOMA DISCOVERY CODE, his neglect and failure to supplement his response to this Petitioner's FIRST SET OF MIXED DISCOVERY REQUESTS, INTERROGATORY NO. 1 with his correct address as was duly required under 12 O.S. 1989 $3226E(1) (a) (2) (a) (ii), is arbitrary and capricious so as to violate Petitioner's DUE PROCESS and EQUAL PROTECTION rights protected under the 14TH AMENDMENT, SECTION 1, U.S. CONSTITUTION.

LIST OF PARTIES TO THE PROCEEDINGS IN THE COURTS BELOW

1. PETITIONER

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2. CLARENCETTA J. FRANKS d/b/a
JEAN'S DAY CARE CENTER INCORPORATED,
DEFENDANT
J. CURT HENDRIX,
ATTORNEY FOR DEFENDANT
4815 SOUTH HARVARD AVENUE
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THIS DEFENDANT DID NOT PARTICIPATE IN THE STATE APPEAL PROCEEDINGS.

3. RESPONDENT

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PLAINTIFF/APPELLEE
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OPINIONS AND ORDERS ENTERED BELOW

The TULSA COUNTY, OKLAHOMA DISTRICT COURT entered its ORDER on 09/07/95, granting APPELLEE's motion for monetary sanctions to be imposed upon this APPELLANT in the sum of $480.00. A copy of which appears in the APPENDIX to this Petition, at page TEN i (10i).

THE SUPREME COURT OF OKLAHOMA entered an ORDER on 11/14/95, granting the APPELLEE'S motion to dismiss in part and denying in part this APPELLANT'S PETITION IN ERROR. A copy of which appears in the APPENDIX to this PETITION, at page ONE i (1i).

The OKLAHOMA COURT OF APPEALS, DIVISION III, entered its opinion and decision affirming the trial court's order on 07/12/96 in this case, a copy of which appears in the APPENDIX to this PETITION, at page TWO i (2i).

The OKLAHOMA COURT OF APPEALS, DIVISION III, entered its ORDER denying this APPELLANT'S MOTION FOR REHEARING without comment on 08/09/96, a copy of which appears in the APPENDIX to this PETITION, at page SEVEN i (7i).

The OKLAHOMA SUPREME COURT entered its ORDER denying this PETITIONER'S PETITION FOR WRIT OF

OPINIONS AND ORDERS ENTERED BELOW

CERTIORARI without comment on 10/23/96 in this case, a copy of which appears in the APPENDIX to this PETITION, at page EIGHT i (8i).

The PETITIONER'S AMENDED PETITION IN ERROR filed in the TRIAL COURT and the OKLAHOMA SUPREME COURT, on 09/26/95 and 09/27/95, respectively.

A copy of which appears in the APPENDIX to this petition, at page SIXTEEN i (16i).

The NOTICE OF INTENT TO FILE A PETITION FOR WRIT OF CERTIORARI TO THE OKLAHOMA SUPREME COURT IN THE UNITED STATES SUPREME COURT, on or before 01/23/97. A copy of which appears in the APPENDIX to this petition, at page TWENTY-SEVEN i (27i).

JURISDICTION

On 09/07/95, the trial court, absent its jurisdiction being legally invoked under the provisions of 12 O.S. 1989 $3230, entered its order granting the Respondent's motion for monetary sanctions in the sum of $480.00, under guise, pursuant to the authority under 12 O.S. 1989 $3230H(2), against this Petitioner for cancelling and failing to attend the taking of the Respondent's deposition, when in fact, he was never personally served the duly required subpoena and/or notice pursuant to the provisions under 12 O.S. 1991 $2004.1A(2) and 12 O.S. 1989 $3230B(2), respectively, in order to compel him to attend and give said deposition, because, said Respondent neglected and failed to supplement his response to this Petitioner's FIRST SET OF DISCOVERY REQUESTS, INTERROGATORY NO. 1, with his correct address as is duly required pursuant to the provisions under 12 O.S. 1989 $3226E(1) (a) (2) (a) (ii).

Thereafter, pursuant to 12 O.S. 1993 $993A(5), this Petitioner commenced his appeal of said order in the OKLAHOMA SUPREME COURT, in a case styled GERALD "MIKE" HOWARD, APPELLEE/PLAINTIFF, vs. ALBERT C. HUTTON JR., APPELLANT/DEFENDANT, NUMBERED 86194, wherein this Petitioner raised and urged the federal question of the violation of his due process rights guaranteed and protected under the 14th AMENDMENT,

JURISDICTION

$1, U.S. CONSTITUTION, which case was assigned to the STATE OF OKLAHOMA, COURT OF APPEALS, DIVISION III, on 07/12/96, said court entered its opinion and order affirming the trial court's order.

On 07/22/96, this Petitioner filed his petition for rehearing to which the COURT OF APPEALS denied without comment, and thereafter, on 08/09/96, said Petitioner filed his PETITION FOR WRIT OF CERTIORARI to the COURT OF APPEALS, DIVISION III, STATE OF OKLAHOMA, in the OKLAHOMA SUPREME COURT, which was denied on 10/23/96, without comment, and further, during the state appellate proceedings neither Court addressed the issue urged by this Petitioner that said order was a violation of his due process rights guaranteed and protected under the provisions of the 14TH AMENDMENT, $1, U.S. CONSTITUTION, because the trial court was totally absent jurisdiction or authority to enter said order. That this Petitioner has exhausted his state appellate process and on 11/13/96, timely filed his NOTICE OF INTENT to file, in the UNITED STATES SUPREME COURT, a PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF OKLAHOMA. The provisions under 28 USC $1257(a) invokes this COURT'S jurisdiction to grant this PETITIONER'S PETITION FOR WRIT OF CERTIORARI TO THE OKLAHOMA SUPREME COURT to review said order and determine its validity.

CONSTITUTION, STATUTES AND RULES INVOLVED

CONSTITUTION

1. 14TH AMENDMENT, U.S. CONSTITUTION, $1.

OKLAHOMA STATUTES ANNOTATED

1. 12 O.S. 1989 $901. RIGHT TO PERFECT APPEAL TO SUPREME COURT WITHOUT FILING MOTION FOR NEW TRIAL- EXEMPTION.

2. 12 O.S. 1993 $993A(5). APPEAL FROM CERTAIN ORDERS.

3. 12 O.S. 1993 $2004.1A(2). SUBPOENA; FORM; ISSUANCE.

4. 12 O.S. 1989 $3224. SHORT TITLE AND COPE OF CODE.

5. 12 O.S. 1989 $3225. CONSTRUCTION.

6. 12 O.S. 1989 $3226E(1) (a) (2) (a) (ii). GENERAL PROVISIONS GOVERNING DISCOVERY.

7. 12 O.S. 1989 $3230B(2). DEPOSITIONS UPON ORAL EXAMINATIONS.

8. 12 O.S. 1989 $3230H(1). FAILURE TO ATTEND OR TO SERVE SUBPOENA, EXPENSES.

SEE APPENDIX COMMENCING AT PAGE TWELVE i (12i), FOR VERBATIM CITING.

STATEMENT OF THE CASE

PRELIMINARILY, Petitioner respectfully requests the COURT to note that this case involves primarily the DISCOVERY STATUTES OF OKLAHOMA, 12 O.S. 1989 $3224 et seq. In WEST vs. CAJUN'S WARF, INC., 770 P.2d 558(OKL. 1988), at p.562, the OKLAHOMA SUPREME COURT vacated the COURT OF APPEAL'S opinion and order; set aside judgment on jury verdict; and, remanded the case for a new trial, wherein the OKLAHOMA SUPREME COURT stated: "Since the discovery statute set out clearly tracks RULE 26(e), FEDERAL RULES OF CIVIL PROCEDURE, we find guidance in the decisions of the federal courts." The Court cited from DOLLAR vs. LONG MFG.; 561 F.2d 613 (5TH CIR. 1977); WEISS vs. CHRYSLER MOTOR CORP., 615 F.2d 449 (2ND CIR. 1975); and, EDGAR vs. FINLEY, 312 F.2d 533 (8th CIR. 1963).

This is an appeal of an order in a lien foreclosure action in the DISTRICT COURT OF TULSA COUNTY, STATE OF OKLAHOMA, styled and numbered: GERALD "MIKE" HOWARD, PLAINTIFF, vs. ALBERT C. HUTTON, JR., AND CLARENCETTA J. FRANKS d.b.a. JEAN'S DAY CARE CENTER, INCORPORATED, DEFENDANTS, CASE NO. CJ 93-0795, entered on 09/07/95, which grants the Respondent's motion for monetary sanction in the sum of $480.00 to be imposed against this Petitioner, authorized an appeal pursuant to the provisions under 12 O.S.

1993 $993A(5).

On 06/28/95, this Petitioner filed and issued a subpoena duces tecum and notice to take the Respondent's oral deposition on 07/14/95. A copy of each was delivered to the TULSA COUNTY SHERIFF'S OFFICE to render personal service of the same upon the Respondent as was duly required pursuant to the provisions under 12 O.S. 1993 $2004.1D and 12 O.S. 1989 $3230B(2), respectively, in order to legally compel him to attend and give the same. A copy of the notice was mailed to Respondent's attorney, and thereafter, on 07/11/95, this Petitioner was notified by the Sheriff's Office that personal service upon the Respondent at the address on the subpoena and notice failed because the house was vacant. The Petitioner cancelled the taking of Respondent's oral deposition for lack of personal service of the subpoena and/or notice upon Respondent which was the direct and proximate result of his neglect and failure to supplement his response to petitioner's FIRST SET OF MIXED DISCOVERY REQUESTS, INTERROGATORY NO. 1, with his correct address as was duly required under the provisions of 12 O.S. 1989 $3226E(1) (a) (2) (a) (ii), therefore, such neglect and failure constitutes a violation of law, and further, because of lack of personal service of the subpoena and/or notice,

STATEMENT OF THE CASE

Respondent was not legally compelled to give his deposition unless he waived his right to personal service of the same. The record is totally void of any such waiver.

On 07/21/95, Respondent filed his motion for monetary sanctions in the sum of $480.00 to be imposed upon this Petitioner, founded upon a claim for damages allegedly sustained because of this Petitioner's cancellation of the Respondent's oral deposition, when in fact, he had not been personally served the duly required subpoena and/or notice to be legally required to attend and give the same, and further, service of notice upon the Respondent's attorney did not satisfy the personal service requirements under $3230B(2), supra. On 07/26/95, Petitioner responded to said motion stating to the effect that it was totally absent any merit, either in law, or in fact, because: (1) the basis for said motion is founded solely upon Respondent's allegation for damages, if any, as a direct and proximate result of his negligence and violation of law; and, (2) the trial court's jurisdiction was never legally invoked under the provisions or 12 O.S. 1989 $3230, to grant the relief requested by the Respondent because he was never personally served the subpoena and/or notice pursuant to

$2004.1A(2) and/or $3230B(2), supra respectively, thus, the trial court's jurisdiction or authority was totally absent to enter said order pursuant to 12 O.S. 1989 $3230H(1).

On 09/07/95, the trial court entered its order granting the Respondent's motion for monetary sanctions in the sum of $480.00 against this Petitioner; and on 09/26/95, this Petitioner commenced this instant appeal by filing his PETITION IN ERROR in the OKLAHOMA SUPREME COURT pursuant to the authority under the provisions of 12 O.S. 1993 $993A(5), without filing a motion for reconsideration pursuant to the provisions under 12 O.S. 1968 $991(a), raising the issues of jurisdiction and DUE PROCESS. The case is styled and numbered; ALBERT C. HUTTON, JR., APPELLANT vs. GERALD "MIKE" HOWARD, APPELLEE, CASE NO. 86194.

This instant appeal case was assigned to the OKLAHOMA APPEALS COURT, DIVISION III, by the SUPREME COURT OF OKLAHOMA, for adjudication of this instant appeal. On 07/12/96, said Court entered its memorandum opinion and order affirming the trial court's order this appeal complains of; and, on 07/22/96, Petitioner filed his PETITIONFOR A REHEARING, again raising the issues of jurisdiction and DUE PROCESS, which was denied on 08/09/96, absent any comment concerning the same

by the Court; and, on 08/25/96, this Petitioner filed it AMENDED PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS, DIVISION III, STATE OF OKLAHOMA in the OKLAHOMA SUPREME COURT, raising therein again the issues of jurisdiction and DUE PROCESS-DEPRIVATION THEREOF which is guaranteed and protected by the 14TH AMENDMENT, $1, of the U.S. CONSTITUTION; and, on 10/23/96, said petition was denied without comment by the Court as to said issues of DUE PROCESS, and thereafter, this Petitioner filed his notice of intent to file his PETITION FOR WRIT OF CERTIORARI TO THE OKLAHOMA SUPREME COURT in the UNITED STATES SUPREME COURT on or before 01/23/96.

ARGUMENT IN SUPPORT OF WRIT

The Petition for Writ of Certiorari to the OKLAHOMA SUPREME COURT, to review the order entered on 09/07/95, by the DISTRICT COURT of TULSA COUNTY, STATE OF OKLAHOMA, granting the Respondent's motion for monetary sanctions in the sum of $480.00 against this Petitioner; affirmed by the COURT OF APPEALS, DIVISION III, STATE OF OKLAHOMA, in its memorandum opinion and order entered on 07/12/96; the order denying this Petitioner's Petition for Rehearing entered on 08/09/96 by said Court; and, the OKLAHOMA SUPREME COURT'S order entered on 10/23/96 denying this Petitioner's Petition for Writ of Certiorari to the COURT OF APPEALS, DIVISION III, STATE OF OKLAHOMA, and further, neither Court addressed the issue of the federal question-violation of this Petitioner's DUE PROCESS RIGHTS GUARANTEED AND PROTECTED BY THE 14TH AMENDMENT, $1, U.S. CONSTITUTION.

The jurisdiction of this HONORABLE COURT was legally invoked pursuant to the authority under 28 USC $1257(a), coupled with the federal question of DUE PROCESS violations by the state trial court prohibited under the 14th Amendment, $1, U.S. CONSTITUTION raised and urged in the OKLAHOMA SUPREME COURT because this Petitioner chose to commence his appeal by filing a PETITION

ARGUMENT IN SUPPORT OF WRIT

IN ERROR in the OKLAHOMA SUPREME COURT pursuant to the provisions under 12 O.S. 1993 $993A(5). Appeal from certain orders. That reads verbatim:

> "A. When an order:
>
> 5. Directs payment of money pendente lite except where granted at an ex parte hearing, refuses to direct the payment of money pendente lite, or vacates or refuses to vacate an order directing the payment of money pendente lite;"

See CRAFT vs. CHOPRA, OKLA. APP., 907 P.2d 1109(1995), at p.1111, and further, Petitioner did not file a motion for a rehearing to preserve his issues on appeal pursuant to the authority under 12 O.S. 1968 $991(a).

Right to perfect appeal to SUPREME COURT without filing a motion for new trial-Exemption. That reads verbatim:

> "(a) The right of a party to perfect an appeal from a judgment, order or decree of the trial court to the SUPREME COURT shall not be conditioned upon his having filed in the trial court a motion for new trial, but in the event a motion for a new trial is filed in the trial court by a party adversely affected by the judgment, order or decree, no appeal to the SUPREME COURT may be taken until subsequent to the ruling by the trial court on the motion for a new trial. This provision shall not apply, however to an appeal from an order of the CORPORATION COMMISSION."

therefore, the urging of issue of DUE PROCESS violations perpetrated upon Petitioner by the. trial court was timely asserted in the OKLAHOMA SUPREME COURT. See JOHN DEERE CO. vs. PAYNE, OKL APP., 592 P.2d 544(1979), at p.545.

That the personal service upon the Respondent of the subpoena and notice was duly required pursuant to the provisions under 12 O.S. 1993 2044.1A(2). SUBPOENA. That reads verbatim:

> "A. SUBPOENA; FORM; ISSUANCE.
>
> 2. A witness shall be obligated upon service of a subpoena to attend a trial or hearing at any place within the state and to attend a deposition or produce or allow inspection of documents at a location that is authorized by subsection B of Section 3230 of this title."

and 12 O.S.1989 $3230B(2). That reads verbatim:

> "B. Place where witness or party is required to attend taking of depositions.
>
> 2. A party, in addition to the place where a witness may be deposed, may be deposed in the county where the action is pending or the county where he is located when the notice is served upon him."

whereas, service of the notice upon Respondent's attorney did not and could not satisfy the previously mentioned statutory requirements to compel him to attend and give his deposition. See $3230B(2), supra.

ARGUMENT IN SUPPORT OF WRIT

Thus, the trial court's jurisdiction to grant Respondent's motion for monetary sanctions against this Petitioner was never legally invoked under the provisions 12 O.S. 1989 $3230 in this adverse proceeding to hear and determine same, because the duly required personal service of the notice was never made upon the Respondent pursuant to $3230B(2), supra, when said statute provides for monetary damages to be assessed against the party giving the notice for certain acts of failing to attend the taking of the deposition, thus, in this instant case, the failure of the duly required personal service of the notice upon the Respondent caused the trial court to be deprived of jurisdiction or power to enter such order, when in fact, there is no performance of the specifically statutory defined act of personal service of the notice upon the party to be deposed, therefore, no jurisdiction exists for any further action in the aforementioned proceeding to hear and determine said Respondent's motion for relief against this Petitioner. See BECK et al vs. RANSOME-CRUMMEY et al., 184 P.431(DCC CA. 1919), at p.434, wherein the court stated:

> "Where a clear statutory requirement is omitted from the initial resolution or process which is the means of imparting notice of adverse proceedings, the rule of

> liberal construction must yield to the CONSTITUTIONAL GUARANTY OF DUE PROCESS OF LAW. Courts cannot in a particular case dispense with any element of notice which the Legislature has enacted shall be given in all similar cases." EMPHASIS ADDED.

Hence, the proceedings in which the trial court entered said order granting the Respondent's motion for monetary sanctions in the sum of $480.00 against this Petitioner fails due process of law, thus, violating the 14TH AMENDMENT, $1, U.S. CONSTITUTION'S guarantee prohibiting deprivation of property absent affording Petitioner due process. SEE LOUISVILLE TRUST COMPANY vs. COMINGOR, 22 S.CT. 293, at p.296, this COURT, in affirming the COURT OF APPEAL'S decree reversing the DISTRICT COURT'S order requiring the assignee of a bankrupt to pay the trustee in bankruptcy money retained by him from the bankrupt's estate; held, to the effect that the DISTRICT COURT'S absence of jurisdiction to enter such order. A failure of due process of law.

Further, failure of the personal service upon the Respondent of the subpoena and/or notice was the result of his failure and neglect to supplement his response to this Petitioner's FIRST SET OF DISCOVERY REQUESTS, INTERROGATORY NO. 1,

with his correct address, a fact that Respondent has never denied, and such failure and neglect constitutes a violation of the provisions under 12 O.S. 1989 $3226E(1)(a) (2)(a)(ii), that reads verbatim:

> "E. Supplementation of Responses. A party who has responded to a request for discovery with a response that was complete when it was made is under no duty to supplement the response to include information thereafter required, except as follows:
>
> 1. A party is under a duty seasonably to supplement the response with respect to any question directly addressed to:
>
> a. the identity and location of persons having knowledge of discoverable matters, and
>
> 2. A party is under a duty seasonably to amend a prior response to an interrogatory, request for production, or request for admission if the party obtains information upon the basis of which:
>
> a. (ii) the party knows that the response which was correct when made; is no longer true is some material respect; and"

ARGUMENT IN SUPPORT OF WRIT

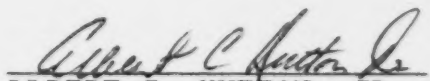
The trial court's order entered granting Respondent's motion for monetary sanctions against this Petitioner for cancelling and failing to attend the taking of his deposition, when in fact, Respondent was never duly served the subpoena and/or notice as was duly required, because he neglected and failed to supplement his response to Petitioner's FIRST SET OF DISCOVERY REQUESTS, INTERROGATORY NO. 1, as was duly required pursuant to $3226E(1)(a)(2)(a)(ii), supra, thus, the alleged damages he sustained, if any, were the direct and proximate result of his own negligence and violation of law. For damages sustained as result of one's own negligence and violation of law, the trial court is totally absent any power to grant any such relief founded upon such claim. See HYDEK vs. SNYDER, 183 P. 923(OKLA. 1919), at p.927; and, MORONEY vs. STATE, 31 P.2d 926(OKLA. 1934), p.927; and, BLAKE vs. METZ, 276 P. 762(OKLA. 1919), at p.764, and further, "DUE PROCESS OF LAW", as to procedure means determination rendered by a court having jurisdiction or authority to render the judgment, order or decree, thus, said order entered by trial court complained of herein is VOID AB INITIO. SEE HYDEK, supra; MORONEY, supra; BLAKE, supra; and, ALABAMA HOSPITAL ASSOCIATION vs. THE UNITED

STATES, 656 F.2d 606(CC, 1981), at p.610, certiorari denied 102 S.Ct. 2006, 456 U.S. 943, 72 l.Ed2d 465.

SUMMARY OF ARGUMENT IN SUPPORT WRIT

That the failure of the duly required personal service of the subpoena and/or notice upon the Respondent as is dictated under the provisions of 12 O.S. 1983 $2004.1A(2) and/or 12 O.S. 1989 $3230B(2), supra, respectively, rendered the trial court powerless to grant Respondent the relief it did because of the non-performance of the specifically statutory defined act of personal service; See BECK, supra, thus, trial court's ORDER entered was an act of judicial fiat, and further, an arbitrary and capricious act of taking Petitioner's money absent due process, a transgression of the 14TH AMENDMENT, $1, U.S. CONSTITUTION, which wrong this COURT is empowered to correct. BRINKERHOFF-FARIS TRUST & SAVINGS CO. vs. HILL, 50 S.Ct. 451, 281 U.S. 673, and further, the failure of the personal service of the subpoena and/or notice upon the Respondent is tne direct and proximate result of his own negligence in violation of law, which further resulted in this Petitioner canceling the taking of his deposition, hence, the trial court's acts of granting him the relief he requested constitutes entering an order against a known prohibition of law that courts will not permit one to profit by his own negligence or violation of law, thus, the trial court was powerless to grant said

relief, another act of judicial fiat, arbitrary and capricious acts resulting in the transgression of the 14TH AMENDMENT, $1, U.S. CONSTITUTION, which amounts to deprivation of Petitioner's money absent DUE PROCESS OF LAW. LOUISVILLE, supra; BRINKERHOFF-FARIS TRUST & SAVINGS CO., supra; POSTAL TELEGRAPH CABLE CO. vs. CITY OF NEWPORT, KY, 38 S.Ct. 566, 247 U.S. 464; HYDEK, supra; MORONEY, supra; and, BLAKE, supra, therefore, said order is void ab initio, SAGERS vs. YELLOW FREIGHT SYSTEMS, INC., et al., 68 F.R.D. 686(DC ND GA, 1975), thus, the writ should be granted and this wrong corrected.



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A P P E N D I X

NO _____

ALBERT C. HUTTON, JR., PETITIONER PRO SE

vs.

GERALD "MIKE" HOWARD, RESPONDENT

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IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

GERALD "MIKE" HOWARD,	)	
	)	
Appellee,	)	
vs.	)	NO. 86,194
	)	
ALBERT C. HUTTON, JR., ET AL.,	)	FILED
	)	SUPREME COURT
	)	STATE OF OKLAHOMA
Appellants.	)	NOV. 14 1995
	)	JAMES W. PATTERSON
	)	CLERK

ORDER

Appellee's motion to dismiss is granted in part and denied in part. The portion of the district court's September 26, 1995 order, which imposes sanctions against appellant Hutton, and which denies appellant's motion for sanctions against appellee, is an interlocutory order appealable by right. 12 O.S. Supp. 1993 $993(A)(5). The portion of the order granting appellee's motion to compel discovery is not reviewable at this time. Carman vs. Fishel, 418 P.2d 963 (OK. 1966).

Accordingly, this appeal shall proceed for review of that portion of the September 26, 1995 order which imposes monetary sanctions against the appellant and denies appellant's motion for sanctions against the appellee.

DONE BY ORDER OF THE SUPREME COURT IN CONFERENCE THIS 14TH DAY OF NOVEMBER, 1995.

"S/ ALMA WILSON"
CHIEF JUSTICE

WILSON, C.J., HODGES, LAVENDER, SIMMS, and OPALA, JJ. - Concur

THE COURT OF APPEALS OF THE STATE OF OKLAHOMA

DIVISION III

GERALD "MIKE" HOWARD,	)	
	)	
Appellee,	)	
	)	
vs.	)	No. 86,194
	)	
ALBERT C. HUTTON, JR.,	)	FILED
	)	COURT OF APPEALS
Appellant,	)	STATE OF OKLAHOMA
	)	JUL 12 1996
and	)	JAMES W. PATTERSON
	)	CLERK
CLARENCETTA J. FRANKS	)	
d/b/a Jean's Day	)	
Care Centers, Inc.,	)	
	)	
Defendant.	)	

APPEAL FROM THE DISTRICT COURT OF TULSA COUNTY, OKLAHOMA

HONORABLE DEBORAH C. SHALLCROSS, JUDGE

AFFIRMED

Albert C. Hutton, Jr.,
Tulsa, Oklahoma,
Appellant Pro Se

Michael E. Yeksavich,
Tulsa, Oklahoma
For Appellee.

MEMORANDUM OPINION

Opinion by Glenn D. Adams, Vice-Chief Judge:

According to previous order by the Oklahoma Supreme Court, this appeal is one seeking review of interlocutory orders appealable by right pursuant to 12 O.S. Supp. 1993 § 993(A)(5). According to that same order, our review is limited to determining whether the trial court properly imposed monetary sanctions against the appellant and refused to impose monetary sanctions against the appellee.

STANDARD OF REVIEW

Appellee's request for sanctions was based on 12 O.S. 1991 § 3230(H)(1), which provides:

> If the party giving the notice of the taking of a deposition fails to attend and proceed therewith and another party attends in person or by attorney pursuant to the notice, the court may order the party giving the notice to pay to such other party the reasonable expenses incurred by him and his attorney in attending, including reasonable attorney's fees.

The Legislature's use of the word "may" when describing the trial court's power to award sanctions under this statute indicates that the trial court has discretion in making such awards. This view is consistent with other provisions for sanctions in civil cases, such as violations of 12 O.S. 1991 § 2011, and such decisions are reviewed under an "abuse of discretion" standard. See Broadwater vs. Courtney, 809 P.2d 1310 (Okla.

1991). In order to reverse a trial court order reviewed under this standard, we must determine that the trial judge made a clearly erroneous conclusion and judgment, against reason and evidence. Abel vs. Tisdale, 619 P.2d 608 (Okla. 1980). Appellant's motion for sanctions was based on § 2011, and we therefore review both of the trial court decisions to determine whether the trial court abused its discretion.

FACTS

The essential facts are not in dispute. Appellee sued Appellant and the other defendant to foreclose a mechanic's lien and recover payment for labor performed on premises owned by the other defendant pursuant to contract with Appellant. Appellant filed a Notice of Deposition and mailed a copy of that notice to Appellee's attorney. Appellant also attempted to serve a subpoena duces tecum personally on Appellee, although the subpoena did not list any documents or other physical evidence which Appellee was required to produce at the deposition. The return on the subpoena indicates the address shown on its face was vacant. Appellant did not send a copy of the subpoena to Appellee's counsel nor did his original Notice of Deposition indicate that a subpoena duces tecum was being issued. Appellant learned several days before the scheduled deposition that the subpoena had not been served

and apparently decided he would be unable to depose Appellee as he had planned. However, he did not contact Appellee or his counsel to advise that the deposition would not take place.

Unaware that Appellant had canceled the deposition, Appellee's attorney expended time the day and time appointed in the notice appeared with his client only to discover that Appellant had previously cancelled the deposition. Appellee then filed his motion to sanction, attaching affidavits from both Appellee and his attorney concerning their expenses in preparation for the deposition and their lack of notice that the deposition had been canceled. Appellee's affidavit included a written statement purportedly signed by his employer outlining Appellee's lost wages. Appellant responded with a motion for sanctions of his own, alleging that Appellee's counsel had violated § 2011 in filing Appellee's motion. Appellant attached no affidavits to his motion, but did attach a letter purportedly from a "certified graphoanalyst" which opined that the employer statement attached to Appellee's affidavit was in Appellee's own handwriting.

After hearing, the trial granted Appellee's motion but limited the sanction to $480, the amount of attorney fees Appellee claimed he incurred as a result of Appellant's actions. The trial court refused to award any sanction against

FACTS

Appellant to compensate Appellee personally for lost wages or other personal inconvenience. The trial court also denied Appellant's request for sanctions.

ANALYSIS

The language of § 3230(H)(1) clearly authorized the trial curt to make an award in this case. Appellant gave notice of a deposition, did not appear, and another party did appear. The only excuse offered by Appellant was his argument that because he did not serve Appellee personally, he did not believe Appellee would be present to testify. This offers no excuse. Subsection (2) of § 3230(H) specifically contemplates the situation where the party giving notice fails to serve a subpoena on a witness to be deposed, and still authorizes an award of attorney fees to parties making a futile appearance at the scheduled deposition. The trial court's sanction award against Appellant was not an abuse of discretion.

Similarly, we must conclude the trial court did not abuse its discretion in refusing to award sanctions against Appellee under § 2011. Appellee's motion made a number factual allegations, but the motion was not verified as required by Rule 4(c), Rules for District Courts, 12 O.S. 1991, Ch. 2, App. Accordingly, under Rule

4(d), Rules for District Courts, 12 O.S. 1991, Ch. 2, App., the trial court was required to deny that motion. The trial court did not abuse its discretion in denying Appellant's request for sanctions. The trial court's orders are affirmed.

AFFIRMED

JONES, P.J. AND GARRETT, J., CONCUR.

RELEASE FOR PUBLICATION IN OKLAHOMA BAR JOURNAL
BY ORDER OF COURT OF APPEALS

THE COURT OF APPEALS, DIVISION III, STATE OF OKLAHOMA

August 8, 1996

THE CLERK IS DIRECTED TO ISSUE THE FOLLOWING ORDERS:

86,194 - Gerald "Mike" Howard, Appellee, vs. Albert C. Hutton, Jr., Appellant, and Clarencetta J. Franks d/b/a Jean's Day Care Centers, Inc., Defendant.

The Petition for Rehearing filed by Appellant is DENIED.

The Motion for Appeal Related Attorney's Fees filed by Appelleeis DENIED.

DONE BY ORDER OF THE COURT OF APPEALS IN CONFERENCE this 8th day of August, 1996.

"S/ CARL B. JONES"
CARL B. JONES, Presiding Judge

FILED
FILED AUG 8, 1996
COURT OF APPEALS
STATE OF OKLAHOMA
JAMES W. PATTERSON
CLERK

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

Wednesday, October 23, 1996

THE CLERK IS DIRECTED TO ISSUE THE FOLLOWING ORDERS:

80,936 Michael Mustain and Peri Lisa Mustain vs. United States Fidelity & Guaranty Company and Commercial Union Insurance Company.
Rehearing denied.
CONCUR: Wilson C.J., Kauger, VS.C.J., Hodges, Opala, Watt, JJ.
DISSENT: Lavender, Simms, Hargrave, JJ.

86,124 In the Matter of the Estate of Bessie M. Patterson, Deceased.
Mabel Patterson et al. vs. Rudolph Jones.
Certiorari denied.
CONCUR: Wilson, C.J., Kauger, vs.C.J., Hodges, Lavender, Simms,Hargrave, Opala, Watt, JJ.

86,194 Gerald "Mike" Howard vs. Albert C. Hutton, Jr., et al.
Certiorari denied.
CONCUR: Wilson, C.J., Lavender, Simms, Hargrave, Opala, Watt, JJ.
DISSENT: Kauger, VS.C.J., Hodges, J.

86,350 Wal-Mart Stores, Inc. and National Union Fire Insurance vs. William Neal Clark and The Workers; Compensation Court.
Certiorari denied.
CONCUR: Wilson, C.J., Kauger, vs. C.J., Hodges, Lavender, Simms,Hargrave, Opala, Watt, JJ.

FILED
STATE OF OKLAHOMA
OCT. 23, 1996
JAMES W. PATTERSON
CLERK

86,827 Gary Medlin, an individual and Dawn Medlin, an individual vs. Texaco, Inc.
Certiorari denied.
CONCUR: Wilson, C.J., Kauger, vs.C.J., Hodges, Lavender, Simms,Hargrave, Opala, Watt, J.J.

86,899 Cust-O-Fab, own risk vs. Robert Lewis and The Workers' Compensation Court.
Certiorari denied.
CONCUR: Wilson, C.J., Kauger, vs. C.J., Lavender, Simms, Hargrave,Watt, JJ.

87,100 Ronald E. O'Dell and Paula O'Dell, husband and wife vs. William Thomas McCullough, Sun Refining & Marketing Company et al.
Certiorari denied.
CONCUR: Wilson, C.J., Kauger, vs. C.J., Lavender, Hargrave, Opala,Watt, JJ.

87,204 Cluster Monroe Rhodes and Barbara Rhodes vs. The City of Muskogee, Oklahoma.
Certiorari denied.
CONCUR: Wilson, C.J., Kauger, vs. C.J.,
Lavender, Hargrave, Opala, Watt, JJ.
DISSENT: Simms, J.

87,401 David Holt, as Personal Representative of the Estates of James W. Holt and Joan Holt, Deceased vs. State of Oklahoma. Certiorari denied.

CONCUR: Wilson, C.J., Kauger, vs. C.J., Lavender, Simms, Watt, JJ.

DISSENT: Hodges, Hargrave, Opala, JJ.

"S/ ALMA WILSON"
CHIEF JUSTICE

IN THE DISTRICT COURT IN AND FOR TULSA COUNTY
STATE OF OKLAHOMA

GERALD "MIKE" HOWARD,	)
	)CJ 93-795
Plaintiff,	)
	)Judge Shallcross
vs.	)
	)DISTRICT COURT
ALBERT C. HUTTON, JR., et. al.,	) FILED
	)SALLY HOWE SMITH, COURT
	)CLERK SEPT 29, 1995
	)STATE OF OKLA.
Defendant.	)TULSA, COUNTY

ORDER

Now on the 30th day of August, 1995, the Court considers the various motions before the Court and Plaintiff appears through his attorney, Michael E. Yeksavich, Albert C. Hutton, Jr. appears pro se and Clarencetta J. Franks appears through her attorney, J. Curt Hendrix appears, and the parties present their arguments and proofs and on September 7, 1995, the Court enters its orders as is hereafter set out.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED BY THE COURT THAT:

1. The Minute order and Judgment entered on August 1, 1995, be and is hereby vacated over Plaintiff's objection.

2. Defendant Hutton be and is hereby granted until September 11, 1995 to respond to Plaintiff's Motion for Summary Judgment or judgment will be entered without further notice to Defendant Hutton.

3. Plaintiff's Motion to Compel be and is hereby granted and the Court will consider costs upon application and Defendant Hutton is ordered to fully respond to discovery by September 11, 1995.

4. Plaintiff's Motion for Sanctions be and is hereby sustained and Plaintiff be and is hereby granted a judgment against Albert C. Hutton, Jr. for $480.00 for reasonable attorney fees for the use and benefit of Plaintiff's attorney and the additional requests in the Motion are denied.

5. Defendant Hutton's Motion for Sanctions be and is hereby overruled.

"S/ D. C. SHALLCROSS"
JUDGE OF THE DISTRICT COURT

Prepared by:

Michael E. Yeksavich
Attorney for Plaintiff
#208, 4821 S. Sheridan Road
Tulsa, Oklahoma 74145
O.B.A. #9948
918-665-7477

MAILING

On the 29 day of September, 1995, I mailed a true and correct copy of the above and foregoing Order by U.S. Mail, postage fully prepaid to: Albert C. Hutton, Jr., 2812 North Boston Pl., Tulsa, Oklahoma 74106 and to J. Curt Hendrix, 7010 S. Yale, Suite 105, Tulsa, Oklahoma 74136.

"S\MICHAEL E. YEKSAVICH"
Michael E. Yeksavich

howardj.jud

CONSTITUTIONAL PROVISIONS, STATUTES AND RULES INVOLVE

1.) UNITED STATES CONSTITUTION

14TH AMENDMENT, $1, U.S. CONSTITUTION, reads verbatim as follows:

"All persons born or naturalized in the UNITED STATES, and subject to the jurisdiction thereof, are citizens of the UNITED STATES and of the STATE wherein they reside. No State shall make or enforce any law which shall abridge the privileges, or immunities of citizens of the UNITED STATES; nor shall any STATE deprive any person of life, liberty, or property, without DUE PROCESS OF LAW, nor deny to any person within its jurisdiction the EQUAL PROTECTION OF THE LAW. (EMPHASIS ADDED) PAGE 6, FEDERAL STATUTES, U.S. CONSTITUTION.

2.) OKLAHOMA STATUTES ANNOTATED

12 O.S. 1989 $901. Right to perfect appeal to Supreme Court without filing motion for new trial-Exemption. Reads verbatim as follows:

"(a) The right of a party to perfect an appeal from judgment, order or decree of the trial court to the Supreme Court shall not be conditioned upon his having filed in the trial court a motion for a new trial, but in the event a motion for a new trial is filed in the trial court by a party adversely affected by the judgment,

order or decree, no appeal to the Supreme Court may be taken until subsequent to the ruling by the trial court on the motion for a new trial. This provision shall not apply, however, to an appeal from an order of the Corporation Commission." PAGE 394, OKLAHOMA STATUTES ANNOTATED, TITLE 12 $$630-1030.

12 O.S. 1993A(5). Appeals from certain orders. Reads verbatim as follows:

"A. When an order:

5. Directs the payment of money pendente lite except when granted at an exparte hearing, refuses to direct the payment of money pendente lite, or vacates or refuses to vacate an order directing the payment of money pendente lite." PAGE 89, OKLAHOMA STATUTES ANNOTATED, TITLE 12 $$630-1030.

12 O.S. 1993 $2004.1A(2). SUBPOENA; FROM; ISSUANCE. Reads verbatim as follows:

"2. A witness shall be obligated upon service of a subpoena to attend a trial or hearing at any place within the state and to attend a deposition or produce or allow inspection of documents at a location that is authorized by subsection B of Section 3230 of this title." PAGE 49, POCKET PART, OKLAHOMA STATUTES ANNOTATED, TITLE 12 $$1381-2100.

12 O.S. 1989 $3224. SHORT TITLE AND SCOPE OF CODE. Reads verbatim as follows:

"Section 3224 through 3231 of this title shall be known and cited as the OKLAHOMA DISCOVERY CODE. THE OKLAHOMA DISCOVERY CODE shall govern civil nature in all courts in this state." PAGE 526, OKLAHOMA STATUTES ANNOTATED, TITLE 12 $$2101-END.

12 O.S. 1989 $3225. CONSTRUCTION. Reads verbatim as follows:

"The DISCOVERY CODE shall be liberally constructed to provide the just, speedy and inexpensive determination of every action." PAGE 526, OKLAHOMA STATUTES ANNOTATED, TITLE 12 $$2201-END.

12 O.S. 1989 $3226e(1) (a) (2) (a) (ii). GENERAL PROVISIONS GOVERNING DISCOVERY. Reads verbatim as follows:

"E. Supplementation of Responses. A party who has responded to a request for discovery with a response that was complete when it was made is under no duty to supplement the response to include information thereafter required, except as follows:

1. A party is under a duty seasonably to supplement the response with respect to any question directly addressed to:

a. The identity and location of persons having knowledge of discoverable matters, and

2. A party is under a duty seasonably to amend a prior response to an interrogatory, request for production, or request for admission if the party obtains information upon the basis of which:

a. (ii) He knows that the response, which was correct when made, is no longer true in some material respect, and PAGE 527, OKLAHOMA STATUTES ANNOTATED, 12 $$2101-END.

12 O.S. 1989 $3230b(2). DEPOSITIONS UPON ORAL EXAMINATION. Reads verbatim as follows:

"B. PLACE WHERE WITNESS OR PARTY IS REQUIRED TO ATTEND TAKING OF DEPOSITIONS.

2. A party, in addition to the places where a witness may be deposed, may be deposed in the county where the action is pending or the county where is located when the notice is served upon him." PAGE 541, OKLAHOMA STATUTES ANNOTATED, 12 $$2101-END.

12 O.S. 1989 $3230H(1). DEPOSITIONS UPON ORAL EXAMINATION. Reads verbatim as follows:

"H. FAILURE TO ATTEND OR TO SERVE SUBPOENA, EXPENSES.

1. If the party giving the notice of the taking of a deposition fails to attend and proceed therewith and ANOTHER PARTY attends in person or by attorney pursuant to the notice, the

Court may order the party giving the notice to pay to such other party the reasonable expenses incurred by him and his attorney in attending, including reasonable attorney's fees." PAGE 545, OKLAHOMA STATUTES ANNOTATED, 12 $$2101-END.

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

GERALD "MIKE" HOWARD Plaintiff/Appellee,	)DOCKET NO. 86194)
	)DISTRICT COURT) FILED
vs.	)SEP 26 1995
	)SALLY HOWE SMITH,
ALBERT C. HUTTON, JR. et al., Defendant/Appellant	)COURT CLERK)STATE OF OKLA.)TULSA COUNTY

AMENDED
PETITION IN ERROR
(PRELIMINARY STATEMENT) (INTERLOCUTORY ORDER)

A. TRIAL COURT HISTORY

COURT: DISTRICT
CASE NO: CJ 93-0795
COUNTY: TULSA
JUDGE: THE HONORABLE DEBORAH SHALLCROSS

DATE ORDER APPEALED PRONOUNCED:
09/07/97
WAS APPELLANT OR APPELLANT'S ATTORNEY PRESENT WHEN THE ORDER WAS ISSUED? NO
IF NOT. WAS A PARTY OR CLERK DIRECTED TO MAIL A COPY OF THE ORDER TO THE APPELLANT? YES
IF MAILING WAS ORDERED, ON WHAT DATE WAS THE ORDER MAILED TO THE APPELLANT? 09/07/95
BY MARTHA BUTTON, DEPUTY COURT CLERK FOR TULSA COUNTY.

B. DISPOSITION IN TRIAL COURT

NATURE OF ORDER APPELLANT SEEKS TO REVERSE:
IMPOSITION OF SANCTIONS AGAINST HIM-THE AWARDING OF $480.00 IN ATTORNEY FEES TO APPELLEE'S ATTORNEY; GRANTING APPELLEE'S MOTION TO COMPEL; AND, OVERRULING APPELLANT'S MOTION TO IMPOSE SANCTIONS UPON APPELLEE AND HIS ATTORNEY.

RELIEF SOUGHT BY APPELLANT IN TRIAL COURT:
THE DENIAL OF APPELLEE'S MOTION FOR SANCTIONS TO BE IMPOSED AGAINST HIM SEEKING $480.00 IN ATTORNEY FEES AND THE RECOVERY OF ALLEGED DAMAGES IN THE SUM OF $100.00; THE DENIAL OF APPELLEE'S MOTION TO COMPEL HIM TO PRODUCE CERTAIN DOCUMENTS; AND, THE GRANTING OF HIS MOTION FOR SANCTIONS AGAINST THE APPELLEE AND HIS ATTORNEY, THAT EACH BE ORDERED TO PAY $350.00 TO APPELLANT FOR COSTS AND DAMAGES, IN ADDITION, APPELLEE AND HIS ATTORNEY EACH BE ORDERED TO PAY INTO THE TULSA COUNTY COURT FUND $500.00.

RELIEF GRANTED BY TRIAL COURT: NONE
RELIEF SOUGHT BY APPELLEE IN TRIAL COURT?
THE GRANTING OF HIS MOTION FOR SANCTIONS-THE AWARDING OF ATTORNEY FEES IN THE SUM OF $480.00 AND THE RECOVERY OF ALLEGED DAMAGES IN THE SUM OF $100.00; THE GRANTING OF HIS MOTION TO COMPEL THE DEFENDANT HUTTON TO PRODUCE CERTAIN DOCUMENTS; AND, THE DENIAL OF APPELLANT'S MOTION FOR SANCTIONS AS IS FULLY DESCRIBED HEREINABOVE.

RELIEF GRANTED BY TRIAL COURT:
IMPOSITION OF SANCTIONS AGAINST APPELLANT-THE AWARDING OF $480.00 IN ATTORNEY FEES; THE GRANTING OF HIS MOTION TO COMPEL APPELLANT TO PRODUCE CERTAIN DOCUMENTS ON 09/11/95; AND, THE OVERRULING OF APPELLANT'S MOTION TO IMPOSE SANCTIONS AS IS FULLY DESCRIBED HEREINABOVE.

ANY RELATED OR PRIOR APPEALS
NO

COURT REPORTER'S ESTIMATE OF NUMBER OF TRANSCRIBED PAGES 0.

THE APPLICABLE ISSUES INVOLVED IN THE APPEAL ARE:

✓ 03 ATTORNEYS

✓ 08 CONSTITUTIONAL LAW

✓ 29 JURISDICTION & VENUE

✓ 40 DISCOVERY

E. ALL APPELLANTS MUST SHOW HOW THE APPEAL IS TIMELY BROUGHT.

THE APPEAL FROM THE INTERLOCUTORY ORDER APPEALABLE BY RIGHT IS TIMELY BROUGHT BECAUSE:

1. THE PETITION IN ERROR WAS DELIVERED TO THE CLERK OF THE SUPREME COURT WITHIN THIRTY DAYS OF:

_____ B. THE DATE THE ORDER WAS MAILED TO THE APPELLANT BY THE DISTRICT DEPUTY COURT CLERK.

F. IS APPELLANT WILLING TO PARTICIPATE IN AN ATTEMPTED SETTLEMENT OF THE AP-BY PREDECISIONAL CONFERENCE UNDER COURT OF APPEALS RULE 3.7 IF OFFERED THE OPPORTUNITY? NO

G. IS APPELLANT AGREEABLE TO ACCELERATE PROCEDURES FOR THIS APPEAL UNDER COURT RULE? (FAST TRACK) NO

H. NAME OF COUNSEL

ATTORNEY FOR APPELLANT	ATTORNEY FOR APPELLEE
ALBERT C. HUTTON, JR.	MICHAEL E. YEKSAVICH
APPELLANT PRO SE	4831 SOUTH SHERIDAN RD.
2812 N. BOSTON PLACE	SUITE 208
TULSA, OKLAHOMA 74106	TULSA, OKLAHOMA 74145
(918) 582-7746	(918) 665-7477

I. DATE SEPTEMBER 26, 1995
VERIFIED BY:

/S/ ALBERT C. HUTTON, JR.,
ALBERT C. HUTTON, JR., PRO SE
2812 NORTH BOSTON PLACE
TULSA, OKLAHOMA 74106
(918) 582-7746

J. AFFIDAVIT OF MAILING TO APPELLEE AND DISTRICT COURT CLERK ON DAY OF FILING IN SUPREME COURT

I hereby certify that a true and correct copy of the above and foregoing Petition in Error was mailed this 26 day of September, 1995, to MICHAEL E. YEKSAVICH, 4821 S. SHERIDAN ROAD, SUITE 208, TULSA, OKLAHOMA 74145.

I further certify that a copy of the above and foregoing Petition in Error was filed in the OFFICE OF THE COURT OF TULSA COUNTY on the 26 day of September, 1995.

"S/ ALBERT C. HUTTON, JR.,"
ALBERT C. HUTTON, JR.,

IN THE DISTRICT COURT IN AND FOR TULSA COUNTY
STATE OF OKLAHOMA

DISTRICT COURT
FILED
SEP 26 1995
SALLY HOWE SMITH,
COURT CLERK
STATE OF OKLA.
TULSA COUNTY

GERALD "MIKE" HOWARD,
Plaintiff,

vs.

ALBERT C. HUTTON, JR., et al,
Defendant.

CASE NO. CJ 93-0795

ORDER

NOW ON THIS 7TH day of September, 1995, these matters came on for determination in their regular order upon Defendant Hutton's motion to vacate void default judgment; Plaintiff's motion to compel against the Defendant Hutton; Plaintiff's motion for sanctions against the Defendant Hutton; and, Defendant Hutton's motion for sanctions against the Plaintiff and his attorney and the Court having examined the files and records finds that: Defendant Hutton's motion to vacate void default judgment should be granted over Plaintiff's objections; Plaintiff's motion to compel the Defendant Hutton to produce the requested documents on 09/11/95 should be granted; Plaintiff's motion for sanctions against the Defendant Hutton should be granted in the sum of $480.00 for attorney fees and all additional

(EXHIBIT "A")

requests therein should be denied; and, Defendant Hutton's motion for sanctions against Plaintiff and his attorney should be overruled.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Defendant Hutton's motion to vacate void default judgment be, and the same is hereby vacated, voided and held for naught.

FURTHER, IT IS ORDERED, ADJUDGED AND DECREED that Plaintiff's motion to compel be, and the same is hereby granted and the Court will consider costs upon application.

FURTHER, IT IS ORDERED, ADJUDGED AND DECREED that Plaintiff's motion for sanctions against the Defendant Hutton be, and the same is hereby granted in the sum of $480.00 for attorney fees and all additional requests therein are denied.

FURTHER, IT IS ORDERED, ADJUDGED AND DECREED that Defendant Hutton's motion for sanctions against the Plaintiff and his attorney be, and the same is hereby overruled.

"S/ D.C. SHALLCROSS"
JUDGE OF THE DISTRICT COURT

(EXHIBIT "A")

C. SUMMARY OF THE CASE

On 06/28/95, Appellant filed notice and subpoena duces tecum to take Appellee's deposition on 07/14/95, mailed a copy of the notice to Appellee's Attorney and delivered a copy to the Tulsa County Sheriff's Office to serve the Appellee at the address he have in his response to Appellant's FIRST SET OF DISCOVERY REQUESTS, INTERROGATORY NO. 1:, and thereafter, The Tulsa County Sheriff's Deputy found the home at the given address vacant, thus, no service upon Appellee personally was had as is duly required because Appellee or his attorney failed to update record as was duly required, hence, the Appellant did not attend the taking of Appellee's deposition, by reasons: (1) failure of personal service of notice upon Appellee and (2) failure of Appellee or his attorney's notice that he would attend and waive his right to personal service of said notice and subpoena.

On 07/21/95, Appellee filed his motion for sanctions to be imposed upon this Appellant seeking attorney fees in the sum of $480.00 and damages he allegedly sustained in the sum of $100.00, which Appellant responded to on 07/26/95, which Appellee replied to on 08/02/95, which Appellant responded to 08/07/95.

On 09/07/95, the trial court entered its order granting Appellee attorney fees in the sum

(EXHIBIT "B")

of $480.00 and denied the Appellee's requires for damages in the sum of $100.00; granted his motion to compel the production of documents; and, overruled Appellant's motion for sanctions against the Appellee and his attorney.

(EXHIBIT "B")

D. ISSUES AND ERRORS PROPOSED TO BE RAISED ON APPEAL

1.) THAT PERSONAL SERVICE OF THE NOTICE AND/OR SUBPOENA TO TAKE THE DEPOSITION OF APPELLEE WAS DULY REQUIRED.

2.) THAT SERVICE OF NOTICE TO TAKE APPELLEE'S DEPOSITION UPON HIS ATTORNEY WAS NOT PERSONAL SERVICE UPON THE APPELLEE.

3.) THAT SERVICE OF NOTICE TO TAKE APPELLEE'S DEPOSITION ON ATTORNEY DID NOT SUBSTITUTE THE DULY REQUIRED PERSONAL SERVICE UPON APPELLEE.

4.) THAT FAILURE OF PERSONAL SERVICE UPON THE APPELLEE DULY REQUIRED THAT HE NOTIFY APPELLANT THAT HE VOLUNTARILY WAIVED HIS RIGHT TO PERSONAL SERVICE AND THAT HE WILL APPEAR AND GIVE HIS DEPOSITION ON 07/14/95.

5.) THAT APPELLANT'S FAILURE TO ATTEND THE TAKING OF APPELLEE'S DEPOSITION WHEN APPELLEE IS NOT PERSONALLY SERVED IS NOT A VIOLATION OF THE OKLAHOMA DISCOVERY CODE.

6.) THAT ABSENT ANY VIOLATION OF THE OKLAHOMA DISCOVERY CODE BY THIS APPELLANT THE TRIAL COURT WAS ABSENT ANY AUTHORITY ON 09/07/95 TO IMPOSE SANCTIONS AGAINST THIS APPELLANT AWARDING APPELLEE ATTORNEY FEES IN SUM OF $480.00.

7.) THAT THE APPELLEE AND HIS ATTORNEY VIOLATED THE OKLAHOMA DISCOVERY CODE WHEN THEY FAILED TO UPDATE APPELLEE'S RESPONSE TO INTERROGATORY NO. 1: OF APPELLANT'S FIRST SET OF MIXED DISCOVERY REQUESTS WITH THE CORRECT ADDRESS OF APPELLEE'S RESIDENCE.

8.) THAT APPELLEE'S MOTION FOR SANCTIONS IS FRIVOLOUS AND A SHAM, VIOLATIONS OF 12 O.S. $$2011,3226.

(EXHIBIT "C")

9.) THAT THE ORDER RENDERED BY THE TRIAL COURT ON 09/07/95, IMPOSING SANCTIONS AGAINST THIS APPELLANT IS NULL, VOID AND FAILS DUE PROCESS.

10.) THAT THE TRIAL COURT ERRED IN FAILING TO AFFORD HEARINGS PRIOR TO DETERMINATION OF APPELLEE'S MOTION FOR SANCTIONS;APPELLEE'S MOTION TO COMPEL; AND, APPELLANT'S MOTION FOR SANCTIONS.

11.) APPELLEE'S MOTION TO COMPEL WAS RENDERED MOOT BY THE TRIAL COURT'S ORDER ON 08/01/95, WHICH ORDER HAS NEVER BEEN VACATED SINCE.

(EXHIBIT "C")

EXHIBIT "D"

THIS APPELLANT DESIRES A FULL REGULAR APPEAL PROCESS FOR THIS INSTANT CASE BECAUSE HE IS NOT A TRAINED ATTORNEY WITH EXPERIENCE TO ADEQUATELY DEFEND HIMSELF AGAINST APPELLEE'S ATTORNEY IN A RAPID OR SPEEDY APPEAL PROCESS. THE FULL REGULAR APPEAL PROCESS WOULD ENABLE THIS APPELLANT TO HAVE TIME TO RESEARCH AND PREPARE ADEQUATE RESPONSES TO APPELLEE'S PLEADINGS AND RESPONSES.

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

ALBERT C. HUTTON, JR., APPELLANT,	)	FILED SUPREME COURT STATE OF OKLAHOMA NOV 13 1996 JAMES W. PATTERSON CLERK
vs.	)	CASE NO. 86194
GERALD "MIKE" HOWARD, APPELLEE.	)	

NOTICE OF APPELLANT'S INTENT TO FILE IN THE UNITED STATES SUPREME COURT A PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF OKLAHOMA

NOTICE IS GIVEN THAT THE APPELLANT, ALBERT C. HUTTON, JR., on or before 01/22/97, will file a PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF OKLAHOMA in the UNITED STATES SUPREME COURT to review the ORDER rendered against said APPELLANT in the DISTRICT COURT OF TULSA COUNTY, OKLAHOMA, on 09/07/95, sustaining the APPELLEE'S MOTION FOR MONETARY SANCTIONS in the sum of $480.00; on 07/12/96, said order was affirmed by the COURT OF APPEALS, DIVISION III, STATE OF OKLAHOMA; on 08/09/96, MOTION FOR REHEARING denied by said APPEALS COURT; and, on 10/23/96, PETITION FOR WRIT OF CERTIORARI TO THE APPEALS COURT OF OKLAHOMA.

The filing of the PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF OKLAHOMA is pursuant to 28 USC $1257.

Respectfully submitted,

"S/ ALBERT C. HUTTON, JR.,"
ALBERT C. HUTTON, JR.,
APPELLANT PRO SE
2812 NORTH BOSTON PLACE
TULSA, OKLAHOMA 74106
(918) 582-7746

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of the above and foregoing NOTICE was mailed on the 11th day of NOVEMBER, 1996, with proper postage prepaid to MICHAEL E. YEKSAVICH, 4821 SOUTH SHERIDAN ROAD, SUITE 208, TULSA, OKLAHOMA 74145-7477, AND J. CURT HENDRIX, 5110 SOUTH YALE, SUITE 415, TULSA, OKLAHOMA 74133.

"S/ ALBERT C. HUTTON, JR.,"
ALBERT C. HUTTON, JR.

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

Friday, October 6, 1995

THE CLERK IS DIRECTED TO ISSUE THE FOLLOWING ORDER:

86,128 - THE STATE OF OKLAHOMA, ex rel. J. TULLY McCOY, DISTRICT ATTORNEY FOR THE 21ST PROSECUTORIAL DISTRICT vs. 1990 PONTIAC GRAND AM

Appellant is directed to file an amended record, in order to include certified copies of the petition and answer filed in the district court. Additionally, the entire record must consist either of certified copies or a court clerk's certificate must be attached. The original record did not contain any certification by the clerk. The amended record must be filed within 10 days of the date of this order.

84,349 - MARILYN MILES AND LYNDALL MILES vs. CHERYL MICHAELIS and MICHAEL MICHAELIS, M.D. Court notes appellant's suggestion of discharge. Court also notes that there are two appellees in this case and only one appellee has received a bankruptcy discharge. If appellant wishes to dismiss the entire appeal against both the appellees, appellant shall file a motion to dismiss within 10 days of the date of this order.

FILED
SUPREME COURT
STATE OF OKLAHOMA
OCT - 6 1995
JAMES W. PATTERSON
CLERK

86,194 - GERALD "MIKE" HOWARD vs. ALBERT C. HUTTON, JR., et al.
Appellant is directed to respond to the dismissal motion contained in the response to the petition in error not later thank October 24, 1995.

86,017 IN THE MATTER OF THE ESTATE OF THELMA COX BAILEY, DECEASED. MARY KATHERINE HARRIS vs. R.L. HARRIS

Consideration of the dismissal motion contained in the response to the amended petition in error is deferred to the decisional stage. See this Court's orders of August 31 and September 13, 1995.

83,177 - THE BANK, N.A. vs. JOHN VS. STIRMAN AND TERESA L. STIRMAN

85,753 - DEBORAH ADKINSON vs. STATE OF OKLAHOMA

Appellant is directed to respond to the motions to dismiss filed by the district attorney and the attorney for the children not later than October 24, 1995.

"S/ ALMA WILSON"
CHIEF JUSTICE

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

Monday, February 26, 1996

THE CLERK IS DIRECTED TO ISSUE THE FOLLOWING ORDERS:

IN EACH OF THE FOLLOWING CASES, UNLESS APPELLE'S BRIEF IS FILED BY March 18, 1996, CAUSE WILL STAND SUBMITTED FOR ADJUDICATION OF APPELLANT'S BRIEF ONLY:

84,898 Stanley E. Vaughn vs. Robert Gruschin et al.

85,058 Department of Human Services vs. Everett L. Cordingley.

85,132 Charles E. Pearce vs. Henrietta H. Pearce.

86,412 Liberty Bank & Trust Company vs. Roger N. Taylor.

86,194 Gerald "Mike" Howard vs. Albert C. Hutton, Jr., et al.

85,477 Sally Geraldine Dodson vs. Elmer Dewayne Dodson.

85,015 Shannon Gesiakowski vs. Tim Beesley & Rhonda Beesley.

IN EACH OF THE FOLLOWING CASES, UNLESS APPELLE'S BRIEF IS FILED BY March 18, 1996, CAUSE WILL STAND SUBMITTED FOR ADJUDICATION OF APPELLANT'S BRIEF ONLY:

85,200 Ruth Robertson vs. Action Staff et al.

85,776 Dorothy Sue Clemens vs. Kettle Restaurant et al.

FILED
SUPREME COURT
STATE OF OKLAHOMA
FEB 26 1996
JAMES W. PATTERSON
CLERK

85.867 Kenneth Fisher vs. Green Power Processing et al.

85,719 Stanley G. Wells vs. Special Indemnity Fund et al.

85,961 Larry Wunderlich vs. Air System Components et al.

85,976 Caroline Pino vs. Northrop World Wide Aircraft.

85,833 Gulfstream Aerospace, Inc. vs. Norma Lee Adams et al.

86,176 Kim Dobbs vs. Lexington Nursing Home et al.

86,273 Wal-Mart Stores, Inc. et al. vs. Jack Casto et al.

86,225 Sharon Reese vs. Avis Car Rental et al.

85,997 Louina M. Green vs. Kerr Glass et al.

"S/ ALMA WILSON"
CHIEF JUSTICE

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

THURSDAY, April 11, 1996

THE CLERK IS DIRECTED TO ISSUE THE FOLLOWING ORDERS:

83,647 William R Epperson vs. Dale Pinney,
Court notes appellant's motion for default.
See order of March 3, 1996.

85,855 Sherrill A. Walcott vs. Lois L. Rennewanz a/k/a Lois Tollett and Jim D. Taylor.
Appellee is granted to May 6, 1996 to file brief.

85,926 Jerry L. Conclazier, Amie R. Rose and Colclazier, Rose & Associates, P.C., an Oklahoma professional corporation et al. vs. State of Oklahoma Indigent ex rel. Oklahoma Indigent
Defense System Board and The Oklahoma Indigent Defense System.
Brief of counter-appellant/appellee was accepted for filing April 9, 1996.

86,074 Sun Ridge Investors Ltd. d/b/a Sun Ridge Apartments vs. Richard Parker and Darlene Parker.
Appellants are granted to April 26, 1996 to file brief.

86,194 Gerald "Mike" Howard vs. Albert C. Hutton, Jr., et al.
Appellant's application for a 30-day extension to file reply brief is denied. Brief was due March 25, 1996 and appeal stands ready for assignment to reviewing court.

FILED
SUPREME COURT
STATE OF OKLAHOMA
APR 11 1996
JAMES W. PATTERSON
CLERK

86,220 Willie D. Post vs. Deanna L. Post.
Appellant is granted to April 29, 1996 to file brief.

86,416 Naomi Butcher vs. Cushing Municipal Authority, an Oklahoma public trust authority, Joe R. Manning, Jr., Jim Daves, Robert Basinger and Lee Denny, individually.
Appeal is dismissed on motion of appellant.

86,447 Janelle Watkins and Earnest Watkins, husband and wife vs. Ford Motor Credit Company.
Appeal and counter-appeal are dismissed on joint motion of parties.

86,667 Geraldine Huggins vs. Ted A. Moss Operating Company, Moss-Lawson Energy Limited Partnership,
Moss-Lawson Industries, Inc., Brad A. Moss and Exline Gas Systems, Inc.
Court notes appellants' motion for extension of time to file brief in chief.
Briefing time is suspended during pendency of motion to dismiss.
See Rules on Perfecting a Civil Appeal 1.28(c).

86,934 Special Indemnity Fund vs. Geneva Wilson and The Workers' Compensation Court.
Petitioner is granted to April 15, 1996 to file brief.

"S/ ALMA WILSON"
CHIEF JUSTICE

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

Wednesday, April 24, 1996

THE CLERK IS DIRECTED TO ISSUE THE FOLLOWING ORDERS:

85,388 News Express, own risk vs. Eileen Gilley and The Workers' Compensation Court. Petitioner is directed to a mend petition for certiorari by May 2, 1996 Petition must have copy of Court of Appeals' opinion but no other materials attached as exhibit and be in full compliance with Court of Appeals' Rule 3.14.

84,836 Mary Gill, Personal Representative of the Estate of Helen Vance, Deceased vs. Lloyd Ruff, M.D. and Lloyd E. Ruff, M.D. Appellant is directed to amend petition for certiorari by May 2, 1996. Petition must have copy of Court of Appeals' opinion but no other materials attached as exhibit and be in full compliance with Court of Appeals' Rule 3.14.

84,942 Jan Joseph and Charles Joseph Oil Company vs. Hooten Oil Company, Inc. Appellant is directed to amend petition for certiorari by May 2, 1996. Petition must have copy of Court of Appeals' opinion but no other materials attached as exhibit and be in full compliance with Court of Appeals' Rule 3.14.

85,488 Bryce Turner vs. Sonya Hughes. Appellee is granted to May 13, 1996 to file brief.

FILED
SUPREME COURT
STATE OF OKLAHOMA
APR 2 1996
JAMES W. PATTERSON
CLERK

85,829 Garland Matron Stevens, an individual vs. Ruby Jean Stevens, individually and as Beneficiary and Successor Trustee of the S.G. Stevens January 18, 1990 Revocable Trust Agreement et al.
Unless appellant's brief is filed by April 26, 1996, appeal will be dismissed.

85,857 James Phillip Dickerson vs. Jeannie Lynn Dickerson.
Appellant's brief tendered April 23, 1996 is not accepted for filing as not in compliance with Supreme Court Rule 19.

86,194 Gerald "Mike" Howard vs. Albert C. Hutton, Jr., et al.
Appellant's brief was accepted out of time.
Reply brief in appeal from interlocutory order WAS DUE March 25, 1996.

86,793 Anita Piruanuta, a minor and Melissa Piruanuta, a minor, through their parents and next friends, Verapol and Linda Peeyanun vs. N. Ruth Parker.
Court notes trial court's order allowing withdrawal as attorney of record.
Counsel for appellants David Humphreys and Luke J. Wallace of the Humphreys Law Firm are directed again to order of April 17, 1996.

87, 239 Milton M. Mefford, Jr. vs. Katherine Q. Gallagher Sinclair.

Mark S. Rains and Rosenstein, Fist & Ringold are permitted to withdraw as counsel for appellant.
Court notes entry of appearance of Jack M. Short as successor counsel.

84,639 Dennis Lee Shelton vs. Julia A. Shelton.
Appellant is directed to amend petition for certiorari by May 2, 1996.
Petition must have copy of Court of Appeals' opinion but no other materials attached as exhibit and be in full compliance with Court of Appeals' Rule 3.14.

"S/ ALMA WILSON"
CHIEF JUSTICE

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

Friday, August 23, 1996

THE CLERK IS DIRECTED TO ISSUE THE FOLLOWING ORDERS:

86,194 Gerald "Mike" Howard vs. Albert C. Hutton, Jr.
Appellant is directed to amend petition for certiorari by August 30,1996. Petition must have copy of Court of Appeals opinion but no other materials attached as exhibit and be in full compliance with Court of Appeals Rule 3.14.

87,847 Gayla Jean Smelser vs. James Allen Smelser.
Court notes notice and correction of appellee's statement of the case.

87,885 Texaco Exploration and Production, Inc. vs. Terry King.
Notice of completion of record must be filed by September 26, 1996.
This time limit will not be extended.

FILED
SUPREME COURT
STATE OF OKLAHOMA
AUG 23 1996
JAMES W. PATTERSON
CLERK

"S/ ALMA WILSON"
CHIEF JUSTICE